

Have a Happy and Prosperous New Year



The **APPRAISER**

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Opinion Of Value

By Johnathan Street
Board Member

"Flipping" and other real estate scams involving identity theft and inside participation by conspiring parties are on the rise in major cities and other densely populated or rapidly developing areas around the country, participants at the Association of Appraiser Regulatory Officials (AARO) late October conference in Washington, D.C., were told.

The Arkansas Board was represented at the conference by Chairman Jack Larrison, Vice Chairman Don Jordan, members Isaac Ross and me, and Executive Director Jim Martin.

Speakers John Brennan and Special FBI Agent Jim McNally emphasized these land schemes are dependent on a bad appraisal. A few appraisers have been involved actively in some schemes, they said, but most appraisers are duped because of the complexity of the neighborhoods where the property is located. Prices vary widely in them because many "flips" already have occurred to create an artificial market.

(See AARO CONFERENCE page 5)

Board Proposes Mandated Changes in Regulations

The Arkansas Appraiser Licensing and Certification Board reluctantly has started the necessary process to make two changes in its rules and regulations required by the federal Appraisal Subcommittee (ASC).

ASC Chairman Thomas E. Watson Jr. informed the Board in June that his organization's reviewers found the Arkansas agency "functions effectively and, in most respects, in a manner consistent" with the federal law but that two points needed attention.

First, Watson said the Board rule that allows an appraiser to carry over up to 14 hours of continuing education credits to the next year for license renewal is "inconsistent with Appraisal Qualifications Board (AQB) criteria." He maintained the Arkansas board was informed of this as early as July 1998.

Second, Watson said the ASC has determined that not providing for at least one easy extension of a temporary practice permit is burdensome and a violation of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Arkansas board rules do not authorize an extension, and Watson said they must even though he acknowledged the agency has never received any requests for temporary practice extensions.

The Arkansas board considered Watson's letter at its September 21 meeting and concluded it had no choice but to initiate what is known as the "rule-making process" to put the changes in place.

Board Chairman Jack Larrison notified Watson by letter in September that the Arkansas panel would initiate action to make the changes. Larrison advised Watson the action was being taken reluctantly.

The chairman pointed out that in August 1997, the ASC informed the Arkansas board that its license renewal cycle (1 year) and its continuing education cycle (2 years) were "inconsistent with AQB guidelines" and had to be changed. The Board changed its rules "in such a way as to encourage appraisers in Arkansas to maximize their involvement in more in-depth edu-

(See REGULATIONS, page 2)

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"The Appraiser" is seeking timely articles or comments on practical appraisal subjects of interest to both residential and nonresidential appraisers from appraisers, lending institutions, and other mortgage lenders. The articles or letters should be sent to the Board's office at the above address.

Entered as second class matter:
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Little Rock, Arkansas 72201

2001 USPAP

The 2001 edition of the Uniform Standards of Professional Appraisal Practice (USPAP) goes into effect January 1, 2001.

The Appraisal Standards Board (ASB) of The Appraisal Foundation adopted substantial changes in definitions, ethics rules, supplemental standards, and other matters in the 2001 edition.

Arkansas licensees will be provided a copy of the 2001 edition when it is received by the Board. Arkansas appraisers are advised that taking a continuing education update course on the new USPAP would be a prudent professional step to take.

Additional copies of the new USPAP may be ordered from The Appraisal Foundation by calling (202) 624-3056, or go to its website at:

www.appraisalfoundation.org

Regulations

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cational offerings by allowing fourteen hours of CE carryover for one year."

Shortly after the change was made, Larrison continued, the Board was told the ASC's finding was in error and the AQB had concluded the Board's previous policy of permitting a CE renewal cycle different from the license renewal cycle was acceptable. Carryovers of CE hours was acceptable at the time, too. ASC is now telling the Board that the action it took three years ago must be changed again, he noted.

Larrison advised Watson that the Arkansas procedure for changing rules and regulations is "time consuming" because it consists of review by the Attorney General's office, public notice, public hearing, and Legislative Council approval before they can be adopted and implemented. They also must be filed with the Secretary of State before they can go into effect. He asked for the ASC's "patience and understanding" while the process goes forward.

In response to the ASC's direction, the Board is proposing this language to deal with the CE credits carryover issue:

Each licensee or certificate holder shall have completed during the two year period prior to renewal of his/her license or certification, in an even numbered year, (i.e., 2002, 2004, etc.), a minimum of twenty-eight hours of real estate appraisal instruction approved for continuing education credit by the Board.

On the temporary license extension issue, the Board is proposing to add this language to its rules and regulations:

Appraisers holding a valid Temporary Practice Permit may be granted, on making written request to the Board, an extension of no more than six months from the permit's date of expiration."

Education Providers

Baker's Professional Real Estate College - Contact Billie Joe Baker at (318) 222-7459, Shreveport, LA.

Kelton Schools - Contact Ron Kelton at (870) 932-7202 for future continuing education seminars.

Lifetime Learning of Springfield, MO - Contact Dennis McIlroy at 1-800-383-3365 for future class schedule.

National Association of Independent Fee Appraisers - Call 1-800-335-1751 for more information.

The Columbia Institute - Contact George Harrison at 1-800-460-3147 for information about future continuing education seminars.

The Lincoln Graduate Center - Call 1-800-531-5333 for more information.

University Seminars, Inc. (ASU Division) - Contact Don Featherston at (501) 315-8777. A new class schedule is to be published soon.

Board sees 19 Complaints Through November

Complaints about appraiser work products continue to arrive at the Board office at the same rate as last year, which is more than had been expected.

Through November 30, 19 complaints had been filed this year against 20 appraisers.

Record Keeping Provision Violated

Another issue that concerns the Arkansas Appraiser Licensing and Certification Board is that it continues to see appraisal reports that are neither signed nor sealed (sealed/stamped).

In addition, reports that were provided at the Board's request were not "true copies" of the appraisals that had been given to clients. For example, the report the Board received may be void of pictures, multipurpose addenda, limiting conditions and assumptions or maps, etc.

The Board has begun to bring charges against appraisers who violate this record keeping provision of the USPAP Ethics Rule. Appraisers are advised to be aware of this provision when responding to any Board request for a "true copy" of an appraisal report.

The comment section under the Record Keeping provision of the Ethics Rule states in part: "a photo copy or an electronic copy of the entire actual written appraisal, appraisal review, or consulting report sent or delivered to a client satisfies the requirement of a 'true copy.'"

To avoid adding to his/her problems, an appraiser should submit "true copies" on request!

Consumers (seller/buyer) were among the most dissatisfied because they filed nine of the complaints. The appraisal profession itself was the next most concerned group as reflected in five complaints filed by reviewers. Three lenders, one government unit, and the Board itself filed the remaining complaints.

Only three complaints involved commercial properties. All of the rest were for reports on residential property appraisals!

To date, 8 of the 19 complaints have been dismissed at the probable cause level. Eight of the remaining complaints were referred to informal conferences, but not all of them could be worked out at this level. The Board held two formal hearings on complaints in 2000, and three more are scheduled in early 2001.

The finding of value continues to be the factor that most often triggers a complaint. All complaints are investigated, leading to these conclusions:

- ◆ Appraisers continue to allow too many errors to creep into their work products. (This may be caused by having too many assignments or just failure to proof final documents adequately.)

- ◆ Misrepresentation of material facts have been found in many cases.

- ◆ Appraisers continue to be plagued by an inability to communicate with their clients and/or explain certain appraisal processes to them satisfactorily.

- ◆ There is either geographic incompetence (appraising properties without adequate knowledge of the area's market) or appraisers are performing assignments that exceed their license limits.

- ◆ Property conditions are not depicted adequately.

- ◆ An appraiser failed to disclose his/her relationship with the borrower-client.

- ◆ Multiple errors resulted in a misleading report.

- ◆ Appraiser submitted reports to the Board that were not "true copies" of the documents that had been given to the client.

(See COMPLAINTS, page 4)

Alert: SR 2-3 Compliance Questioned by Board

Some appraisal reports scrutinized recently by the Arkansas Appraiser Licensing and Certification Board contain the signatures of both a trainee and his/her supervising licensed appraiser on the left side of the URAR. The report certification is silent about which one (or both) of the signers personally inspected the subject property pursuant to SR 2-3.

The certification provision in the 2000 Uniform Standards of Professional Appraisal Practice (USPAP) contains this comment: "if more than one person signs the report, this certification must clearly specify which individuals did and which individuals did not make a personal inspection of the appraised property."

Obviously, many appraisers are overlooking this requirement and could be found in violation of the Uniform Standards. Arkansas appraisers are advised to consider this aspect carefully when composing their appraisal reports!

Jordan Tells Speakers for 'Day with The Board' Seminar on April 17

A Nebraska state senator, a Federal Deposit Insurance Corporation (FDIC) official, and Arkansas Securities Commissioner Mac Dodson will be the featured speakers at the annual "A Day With the Board" seminar to be held April 17 at the Riverfront Hilton Hotel in North Little Rock. Program Chairman Don Jordan announces.

Commissioner Dodson and his deputy, Bruce Bobony, will tell participants how their agency regulates mortgage lenders and will review many of the cases it has processed against out-of-state firms.

An FDIC representative to speak at the meeting has not been named yet, but the agency has been invited and urged to send an official to outline with some degree of specificity the numerous findings

of USPAP violations examiners from four federal agencies say they are finding in their appraisal audits. (See adjacent article.)

The FDIC listed 15 concerns/violations it has in a letter sent earlier this year to the Appraisal Standards Board (ASB). The agency, which insures bank deposits, asked the ASB to "reaffirm how an appraiser could apply the Uniform Standards of Professional Appraisal Practice to comply with the minimum appraisal standards in the agency's appraisal regulations."

Jordan and Jim Martin, the Board's executive director, said an open presentation about these findings "would be of tremendous value to the appraiser practitioner."

Nebraska state Sen. David Landis of Lincoln, described as an entertaining speaker, will take the floor in the afternoon. His subject will be "negotiations."

In his 19 years in Nebraska's unique one-house (unicameral) legislature, Landis has passed 200 bills, many of them brokered legislative agreements between labor and management, utilities and ratepayers, big and small banks, insurance companies and trial lawyers, and other seemingly intractable foes.

He also has passed legislation to create a statewide network of mediation centers, establish a system for negotiated administrative rule-making in state government, extend the use of arbitration to resolve disputes, and create the state labor-management collective bargaining system.

A lawyer, Landis' skill has been developed through training seminars at Harvard, MIT, and the University of Illinois. He now teaches negotiation to lawyers and public administration graduate students at the University of Nebraska.

(See SEMINAR, page 8)

Complaints

(Continued from page 3)

If there was a trend reflected in 2000, it is that the complaints are more complex with questionable ethics being at the heart of the Board's concern. The complexity has led to fewer cases being resolved at the informal conference level, causing the complaints to be referred for Board hearings. Complaint processing and investigation continues to consume much of the staff's time and the Board's as well.

Appraiser Suspended

The Board suspended Steve Bailey's CR 1090 certificate for three months after holding a formal administrative hearing on charges he violated Standards and Ethics by reporting a misleading residential property value in an appraisal report.

The Board's order also provided that Bailey will be required to complete a 15-hour Uniform Standards of Professional Appraisal Practice course and a 30-hour Advanced Residential Property Appraising course. He must complete this education within the three months he is suspended or the suspension will continue until he does. When Bailey is reinstated after his suspension, he will be on probation for nine months, during which he will be required to submit monthly logs of his work for Board review. The appraiser had 30 days in which to notify the Board if he planned to appeal its decision to circuit court.



Status Report

As of December 4, 2000, Board records show these totals for appraisers:

State Certified General	361
State Certified Residential	304
State Licensed	103

(Includes Non-Resident Appraisers)

NEXT EXAM

April 7, 2001

Potential applicants should contact the Board's staff for current information on the application process, exam schedules, fees, and other licensing matters. Make inquiries by calling (501) 296-1843, or use the Board's website at www.state.ar.us/alcb/ or write the Arkansas Licensing and Certification Board at 2725 Cantrell Road, Suite 202, Little Rock, AR 72202.

AARO Conference

(Continued from page 1)

They said this could be avoided if appraisers exercise "due diligence" when examining the sales and listing histories of the properties they are appraising. Many of the injured parties are uninformed or first-time home buyers. The fraud eventually results in a large number of foreclosures, they said.

Brenan and McAnally warned that if the trend increases, the resulting damage to homeowners and financial institutions ultimately will lead to additional regulations.

"Flipping" and other land schemes was but one of the subjects discussed at the informative and fast-paced AARO conference.

Arlen C. Mills, chairman, Appraiser Qualifications Board (AQB), reminded us that effective Jan. 1, 2003, seven hours of USPAP continuing education by an AQB-approved instructor of an approved course will be required within every two-year license renewal cycle.

The AQB will meet Feb. 9 in San Francisco to consider possible future revisions in the minimum threshold criteria for qualifying education, licensing, CE and testing, including requiring a college degree to become a licensed or certified appraiser, a separate USPAP section with 25 to 30 questions on the initial licensing or certification test, USPAP testing required for continuing education credit, and testing certified general appraisers on mandatory income capitalization courses every five years.

Mills emphasized the AQB's desire for input from state agencies, appraisers, users of appraisal services, and the public.

If you have an opinion about any of these matters, you should contact the Arkansas Board in Little

Rock or the AQB at 1029 Vermont Ave., N.W., Washington, D.C. 20005; phone (202) 347-7722, or fax (202) 347-7727. Mills said the AQB does read the responses, so please send them.

We also heard a Federal Trade Commission spokesman talk about new privacy legislation and client confidentiality issues.

Ben Henson, executive director of the Appraisal Subcommittee (ASC), reported on his group's concerns about enforcing the ethical conduct of state regulatory members and the effectiveness of enforcement procedures contained in Title XI of 1989 when state ethical standards do not exist.

The ASC also stresses::

That final state agency administrative decisions on appraisal complaints should take place within one year after the complaint is filed.

That it requires states investigating complaints to add apparent USPAP violations, particularly substantive ones, that are uncovered during the review. The violations are to be added even if they have not been identified by the complainant.

The ASC wants states to supervise all activities and practices of persons who are certified or licensed to perform real estate transactions, not just those that are federally related.

The ASC recommends that state laws or regulations authorize the state agency to act as necessary against an uncertified or unlicensed appraiser who performs an appraisal for which a state certified or licensed appraiser is required under federal law or rule.

The ASC is concerned about the direct supervision of unlicensed and uncertified appraiser assistants. The ASC states that anything

less than direct supervision violates the intent and purpose of Title XI, and it has charged states agencies with ensuring that their respective appraiser regulatory programs can identify situations in which direct supervision is not present and take appropriate steps to remedy the situation.

There was a discussion about proposed federal legislation that would require mandatory licensing of appraisers. Some states have this law and others have not addressed the issue. Arkansas is not a mandatory licensure state now.

Henson's report went on to address state regulatory structure to ensure the total independence of state boards in order to avoid conflicts of interest with other state agencies. The ASC also stressed the audit of experience and education submissions for licensing and certification.

It was a jam-packed four days!

F.Y.I.

Arkansas appraisers will be able to renew their licenses using their credit cards via the Internet when the renewal period opens May 1, 2001.

More information will be provided later as it becomes available.

www.state.ar.us/alcb/

Federal Agencies Air Concerns About Appraisals

The four federal agencies that regulate financial institutions have reported to the Appraisal Standards Board (ASB) that their examiners are finding problems with appraisals, most of them involving commercial real estate and residential tract development properties.

To improve compliance with the regulations of the agencies, representatives of the four said, "it would be helpful if the ASB reaffirmed the procedures and practices appraisers should follow when appraising real estate for federally related transactions."

The plea was contained in a letter to ASB Chairman Kenneth J. Kaiser from David D. Gibbons of the Office of the Comptroller of the Currency (OCC); Norah M. Barger of the Federal Reserve Board (the Fed); Mark S. Schmidt of the Federal Deposit Insurance Corporation (FDIC); and John C. Price Jr. of the Office of Thrift Supervision.

The problems generally fall in three appraisal areas, the quartet said. They are failure to comply with Uniform Standards of Professional Appraisal Practice (USPAP), which transforms into compliance with the minimum appraisal standards of the four agencies; appraiser independence; and appraisal review.

Here are the problems the auditors say they have found:

- Failing to identify and analyze all previous sales of the subject property (within the re-

quired time frames), which may facilitate "land flip" deals.

- Using comparable sales transactions that are not arm's length.

- Failing to analyze a current agreement of sale, option, or listing of the property being appraised.

- Failing to disclose known facts about the physical, legal or economic characteristics of the property being appraised when using a hypothetical condition.

- Failing to indicate the "as is" value of the property as of the date of the report and how it differs from the value conclusion under a hypothetical conclusion.

- Misusing the departure rule by insufficiently supporting an opinion of value that results in a conclusion that is not credible.

- Failing to identify and explain clearly the reasons for departure.

- Failing to obtain written concurrence from the client that there is agreement with the use of departure.

- Omitting an approach to value that typical practice and peers would require.

- Failing to address real estate market risk.

- Reporting the sum of retail value of units for a tract development project (5 units or more in a single development) as representing the market value of the whole property.

- Using nonmarket based time constraints when applying deductions and discounts in the valuation of proposed construction or renovation, partially leased buildings, nonmarket lease terms, and tract developments with unsold units. For example, some appraisers do not apply deductions and discounts if they believe the tract will sell within a year.

- Providing an undiscounted value conclusion to an institution financing the development of the land and not the end purchase of the individual units.

- Failing to report appropriate deductions and discounts for a tract development appraisal.

- Altering the title page, transmittal letter, or the identity of the intended user of an appraisal report to lead the reader into believing erroneously that the report originally was prepared for the lender and not the borrower.

- Failing to follow existing appraisal standards to disclose present or prospective relationships with borrowers.

- Changing the market value opinion in the appraisal report without adequately supporting their opinion, thereby producing a conclusion that is not credible.

- Failing to meet minimum USPAP reporting requirements for an institution that requires USPAP Standard Three [sic] reviews.

'Flipping' Q&A: What Is It, How to Avoid It

QUESTION: What is property "flipping," and what does USPAP have to say about it?

ANSWER: "Property flipping" or "a flip" is used commonly to describe the transfer of property where fraud is employed to obtain inflated prices and loans. It is important to note that "property flipping" is distinctly different from the usual activity of buying and selling property at a profit. The real estate market is imperfect. Knowledgeable and honest parties seek opportunities to acquire a given property at a favorable price with the objective of reselling it at a profit. Such activity does not constitute "flipping" because there is no intent to mislead or defraud. USPAP does not describe property flipping itself, but it does prohibit appraisers from communicating assignment results in a fraudulent or misleading manner. The ETHICS RULE is explicit about any kind of activity designed to mislead or defraud as specified in the Conduct section.

An appraiser must perform assignments ethically and competently in accord with these standards and must not engage in criminal conduct.

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report.

QUESTION: As many flipping schemes rely on appraisals, what should appraisers look for to avoid being entangled inadvertently in such schemes?

ANSWER: There are a number of actions appraisers can take to safeguard against over-valuations. Standards Rule 1-5 requires that appraisers analyze any current agreement of sale, opinion, or listing of the property when such infor-

mation is available. Many lenders require that Agreements of Sale be provided to the appraiser for his/her review and analysis. Sometimes the second or third leg of a flip can be discovered when the seller in the sale agreement is not the owner of record. Verification of the terms of sale with brokers also may reveal multiple transactions on the same property.

Experienced appraisers can recognize anomalies in the market and avoid relying on sales that do not reflect the prevailing market. If an appraiser is asked to value a property in an area that is unfamiliar, he/she should become familiar with the area and the market for the subject property. The Comment to the COMPETENCY RULE states this:

The concept of competency also extends to appraisers who are requested or required to travel to geographic areas wherein they have no recent appraisal experience. An appraiser preparing an appraisal in an unfamiliar location must spend sufficient time to understand the nuances of the local market and the supply and demand factors relating to the specific property type and the location involved.

Standards Rule 1-4 requires the appraiser to collect, verify and analyze information applicable to the appraisal problem. Knowing the conditions of sale, financing and motivations of the buyer helps the appraiser adjust sales to the market and avoid the effects of inflated prices. Standards Rule 1-2(e) requires that the appraiser identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including its location and physical, legal, and economic attributes. Knowledge of these attributes plays a critical role in the valuation process. Appraisers should exercise care in identifying these attributes, noting any adverse condition that could impact the property's value.

QUESTION: Is there anything I can put into a report that would protect me from being entangled in a flipping scheme?

ANSWER: There are safeguards in USPAP that pertain to reporting as well. It is good to review the first principle in all the USPAP reporting

standards: to clearly and accurately set forth the appraisal in a manner that will not be misleading. Providing candid and appropriate disclosures in the report serves to limit the appraiser's liability and inform the client about important issues that qualify the conditions of the appraisal.

Standards Rule 2-2 (a-c)(ix) is a good example of where appropriate disclosures help appraisers avoid costly mistakes and subsequent criticism. When the purpose of an assignment is to develop an opinion of market value, a summary of the results of analyzing the information set forth in Standards Rule 1-5 is required. If such information was unobtainable, a statement about the efforts undertaken by the appraiser to obtain the information is required. If such information is irrelevant, a statement acknowledging the existence of the information and citing its lack of relevance is required.

This Standards Rule requires that the appraiser disclose significant information specified in Standard Rule 1-5 if it is available or what steps were taken to obtain the information in the event it was not available. The first type of disclosure protects the appraiser from over-valuation when the information is available, and the second, if addressed properly, should convince third parties that the appraiser exercised reasonable care in the performance of the assignment.

QUESTION: Is the supervisory appraiser who signs a report that was developed for use in a property flipping transaction responsible for the appraisal and contents of the appraisal report?

ANSWER: Yes. Standards Rule 2-5 states: "An appraiser who signs a real property appraisal report prepared by another in any capacity accepts full responsibility for the appraisal and the contents of the appraisal report."

Texas USPAP Update Workshop To Attract 6 from Arkansas

Five members of the Arkansas Appraiser Licensing and Certification Board and the agency's executive director, Jim Martin, will travel to Austin, Tex., in February to attend a workshop on USPAP for instructors and state regulators.

The five members who will attend the Texas Appraiser Licensing and Certification Board's workshop Feb. 16 are Donald Jordan, David Reinold, Mary Lou Brainerd, Thomas Scott and Jonathan Street.

The Texas board offers the annual workshop in cooperation with The Appraisal Foundation and the Appraisal Standards Board (ASB).

ASB Chairman Ken Kaiser and another ASB member will conduct the all-day workshop that will feature an overview of changes in the 2001 Edition of the Uniform Standards of Professional Appraisal Practice (USPAP), how the changes are incorporated into the

National USPAP course, common misunderstandings about USPAP; and an open forum for questions and answers.

Materials those attending will receive include a copy of the 2001 Edition of USPAP; and the 2001 Edition of the National USPAP Course-Instructors Manual with more than 300 transparencies, and a student manual.

Those who attend will receive seven hours of continuing education credits.

By Appraisal Foundation policy, only those instructors who have completed a satisfactory USPAP instructors course may teach the National USPAP Course.

The Texas workshop is in addition to two The Appraisal Foundation will hold in early 2001—in Orlando, Fla., on Jan. 6 and in Washington, D.C. on Feb. 1. The Foundation held workshops in

Seminar

(Continued from page 4)

As in the past, Jordan says members of the Arkansas Board will be present to provide insight about various disciplinary issues, trends, and revised regulations that affect appraiser licensing. Also as in the past, participants will be credited with seven hours of continuing education.

Those who arrive early at the seminar will be able to enjoy a continental breakfast. A buffet lunch is planned also.

Brochures about the seminar that include registration forms will be available shortly after the first of the year. It may be possible for appraisers to register via the Internet for the seminar. Watch for additional information on this!

Omaha, Neb., in October and San Diego, Calif., in early December 2000.

Martin said the Texas workshop is on par in quality with those The Appraisal Foundation offers and is more convenient and cost-effective for Arkansans to attend.

ARKANSAS



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